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7590	10/07/2004		EXAMINER	
BAKER AND BOTTS 2001 ROSS AVENUE DALLAS, TX 752012980			COTTINGHAM, JOHN R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/074,496

MAILED

Filing Date: May 07, 1998

OCT 07 2004

Appellant(s): ALBRITTON, JAMES R.

GROUP 3600

Chad C. Walters
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 7/12/2004.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 37 and 40 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 37 and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Neither the drawings nor the disclosure show the first and second fasteners where the first fastener having first and second connectors. The applicant contends that the second fastener relates to the connection between parts 140 and 144. Neither the drawings nor the specification disclose how the second fastener, if there is a fastener between 140 and 144, has higher failure strength than that of the first fastener comprising connectors 154 and 156. Also the specification does not disclose how parts 140 and 144 are attached, it is assumed that it is a weld joint, but it is unclear, and if it's a weld it cannot be considered a fastener. If 140 and 144 are formed as one piece, then Applicant lacks the showing of a second fastener/attachment of claim 40 a fastener, as defined by Merriam Webster's Dictionary Tenth Edition, is "pinning, tying, or nailing".

(11) Response to Argument

In response to the Appellant's arguments concerning claims 37 and 40 that the specification and figures disclose all the claimed limitations in claims 37 and 40. The Examiner disagrees. The Examiner agrees that the specification and drawings show a first fastener comprising first and second connectors, however, the specification does not disclose how post 144 is attached to bracket 140 to meet the limitation as the second fastener/attachment. It is assumed that it might be a weld, but there is nothing to support that assumption in the specification. In order to read claims 37 and 40 on the disclosed invention, the connection between post 144 and bracket 140 must be viewed as the second fastener/attachment. There is nothing in either the specification nor the drawings that discloses how these two parts are connected or if they are a single part. If they are a single part, then there is no second fastener/attachment, and if they are two parts, the specification does not specify how they are fastened or attached. Also there is nothing in the specification or drawings to support how the first fastener, comprised of connectors 154 and 156, has failure strength less than that of the fastener/attachment between bracket 140 and post 144. Applicant argues because part of the first fastener fails, as in figure 6, it meets the claimed limitations, but the claims state "said first fastener [154 and 156] having a failure strength less than a second failure strength of said attachment[/fastener]" which implies the entire first fastener (154 and 156) must fail before the second fastener (144 and 140). The first fastener has to have first and second connectors, as set out in the claims, and the Applicant implies that the first fastener can be either 154 or 156, but this cannot be since the first and second

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connectors are 154 and 156 which comprises the first fastener. In figure 6, it shows both connector 154 and the connection between the post 144 and bracket 140 still intact after an impact from a vehicle, and there is nothing in the specification to describe the different failure strengths between them.

The only way the disclosed invention can read on the claims is for the connection between 144 and 140 to be the second fastener/attachment. There is no fastener or attachment disclosed or shown. Even assuming bracket 140 is welded to 144, which is assumed by the examiner and not disclosed, the examiner contents a weld is neither a fastener nor an attachment. A fastener as defined by Merriam Webster's Dictionary Tenth Edition, is a "pinning, tying, or nailing". The same dictionary defines an "attachment" as "the process of physically attaching" and "a device attached to a machine or another", this has a connotation that the "attachment" can be unattached, where a weld is permanent and cannot be unattached without damaging either part. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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Primary Examiner
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jrc
September 28, 2004

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